Wilmington, Delaware November 7, 2013

#3878

**Sponsor:** 

Council Member M. Brown WHEREAS, the City of Wilmington Police Department requires additional parking spaces for the storage of police vehicles; and

WHEREAS, the Wilmington Police Department is seeking to enter into a five-year lease agreement with PS#5, LLC ("PS#5"), a non-profit corporation, for the use of forty-four (44) parking spaces for the storage of police vehicles.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE

CITY OF WILMINGTON that the City of Wilmington Police Department is hereby authorized to enter into a lease agreement for forty-four (44) parking spaces in the building located at 1200 North French Street, Wilmington, Delaware, for a five-year term in accordance with the terms set forth in the contract attached hereto as Exhibit "A", and the Wilmington Police Department is hereby authorized to execute as many copies of said lease agreement as may be necessary.

Passed by City Council, November 7, 2013

ATTEST:

Approved as to form this day of November, 2013

Assistant City Solicitor

**SYNOPSIS:** This Resolution authorizes the Wilmington Police Department to enter into a lease agreement for parking at the property located at 1200 North French Street, Wilmington, Delaware. The lease has a term of five years.

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease" or "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between PS#5, LLC, a non-profit corporation of the State of Delaware ("Landlord") and The City of Wilmington, a political subdivision of the State of Delaware ("Tenant").

## WITNESSETH:

WHEREAS, Landlord is the owner of that certain building located at 1200 French Street, Wilmington, DE (the "Building"); and

WHEREAS, the Community Education Building Corp. ("CEB") together with Landlord have or will enter into agreements with Delaware charter schools to operate K-12 public school programs within the Building; and

WHEREAS, the Building contains a parking garage (the "Garage") with four (4) levels of parking and assorted storage rooms and office space; and

WHEREAS, Tenant desires to secure parking in the Garage and office space in the Building for use by the Wilmington Police Department; and

WHEREAS, Landlord desires the removal of parking adjacent to the Building from Walnut to French on 12th Streets and between 12th and 13th Streets on French to create loading and unloading zones for school buses and parent cars, to create a loading zone for mail and package deliveries and to create an emergency vehicle access; and

WHEREAS, Landlord desires to strengthen its partnership with the City of Wilmington and believes the presence of Wilmington Police Department vehicles and personnel will improve the safety and security of the Building and its occupants.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the sum of TEN DOLLARS (\$10.00) in hand paid by Tenant to Landlord and other good and valuable consideration, including Tenant's promise to occupy the Leased Premises (as defined below) with an on-going visual presence of Wilmington Police Officers, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Landlord and Tenant agree as follows, for themselves, their successors and assigns:

1. **DEMISE**. Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord all that certain space shown on the plan attached hereto as EXHIBIT A and made a part hereof (the "Leased Premises"), being the forty-four "Parking Spaces", the "Guard Station," the "Mail Delivery Bay," and the "Maintenance Room," all identified on the Plan, and related access or other space, which Leased Premises constitute a portion of the Garage, on the terms and conditions set forth in this Lease. Unless otherwise provided for herein, the

Parking Spaces shall be "reserved spaces" for use by the Wilmington Police Department and shall be marked by a sign or other indicator on each space as "Reserved". The Parking Spaces shall be delineated and secured by fencing and an electronic sliding gate, to be installed by Landlord prior to the Commencement Date.

- 2. **TERM**. The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term") commencing on ("Commencement Date"). Landlord shall have the right, at its option, to permit the Tenant to renew the term of this Agreement for three (3) successive Renewal Terms (each a "Renewal Term") of five (5) years each (such right to renew a "Renewal Option"). The first Renewal Term shall begin on the day following the expiration of the Initial Term and each successive Renewal Term shall commence on the day following the expiration of the previous Renewal Term. In the event that Landlord permits the renewal of this Agreement, Landlord shall so advise Tenant in writing within eight (8) months prior to the expiration of the then current term of the Lease. Tenant may then exercise such Renewal Option by giving Landlord written notice of such election to renew not later than six (6) months prior to the expiration of the then current term of this Lease. Upon the giving of notice of the exercise of any Renewal Option, this Lease thereupon shall be deemed renewed for the applicable Renewal Term with the same force and effect as if such Renewal Term had been originally included in the Initial Term. All the terms, provisions, agreements, covenants and conditions of this Lease shall continue in full force and effect during each Renewal Term with respect to which Tenant has exercised its Renewal Option, except that the number of remaining Renewal Terms permitted hereunder shall be reduced by one (1) upon the expiration of each Renewal Term for which Tenant has exercised its Renewal Option. In the event that Tenant does not exercise the Renewal Option as set forth herein, the Lease shall continue on a month-to-month basis and either party may terminate the Lease upon thirty (30) days written notice.
- 3. LIENS OR ENCUMBRANCES. Tenant shall not allow or permit the Leased Premises or any improvements thereon to become subject to any lien, charge or encumbrances, and shall indemnify and hold Landlord harmless against any and all such liens, charges and encumbrances arising from acts or omissions of Tenant or those under Tenant's control. This Paragraph shall not be construed as a consent on the part of Landlord to any such lien, charge or encumbrance or for Tenant to perform any work or alterations on the Leased Premises.
- 4. **PERMITTED USE.** During the Term, Tenant shall use and occupy the Leased Premises exclusively for use by the City of Wilmington Police Department for parking of police vehicles and uses incidental thereto (the "Permitted Use"). The Tenant shall obtain and maintain all required permits, authorizations or licenses, if any, now or hereinafter required to conduct or operate the Permitted Use, at Tenant's sole cost and expense.
- 5. PROHIBITED USE. Tenant will not make or permit to be made any use of the Leased Premises which would violate any of the covenants, agreements, terms, provisions and conditions of this Lease, those recorded against title or which may be unreasonably dangerous to life, limb or property or which may invalidate or increase the premium cost of any policy of insurance earned by Landlord on the Leased Premises or its operation or which will suffer or permit the Leased Premises to be used in any manner which would permit anything to be brought into or kept therein which, in the reasonable judgment of Landlord, would in any way impair the

character, reputation or appearance of the Leased Premises or which would threaten the safety of the Leased Premises or any of its occupants. Without limitation of any of its rights hereunder, Landlord agrees that to the extent Tenant utilizes the premises for the Permitted Use in accordance with all applicable laws, regulations and the terms of this Lease, such Permitted Use shall not be deemed a violation of this Paragraph.

6. **CONDITION OF PREMISES.** Tenant acknowledges and agrees to accept the Leased Premises in "as is" condition, without any representation or warranties by or from Landlord of any kind whatsoever including, without limitation, its use or fitness for a particular purpose except that the plumbing, heating, cooling, and electrical systems shall be in working order.

## 7. DAMAGE OR DESTRUCTION.

- a. If during the Term, the Leased Premises are damaged by fire or other casualty, but not to the extent that Tenant, in Landlord's reasonable judgment, is prevented from carrying on the Permitted Use on the Leased Premises, Landlord shall promptly restore the Leased Premises to their condition immediately prior to the casualty, but only to the extent of insurance proceeds recovered.
- b. If during the term the Leased Premises are destroyed or so damaged by fire or other casualty that Tenant, in Landlord's reasonable judgment, is prevented from carrying on the Permitted Use on the Leased Premises, Landlord shall have the option either to restore the Leased Premises to their condition immediately prior to the casualty or to terminate this Lease. Such option shall be exercised by Landlord by written notice to Tenant within thirty (30) days after receiving written notice from Tenant of the casualty.
- c. If Landlord chooses to restore the Leased Premises, it shall prepare or cause to be prepared a reasonable estimate of the time needed to restore the Leased Premises to their condition immediately prior to the casualty. Such estimate shall accompany the written notice to Tenant. If the time period indicated in the notice exceeds ninety (90) days, Tenant may terminate this Lease within five (5) days of receipt of Landlord's notice. If the restoration period is less than the period indicated above or if Tenant agrees to a period in excess of ninety (90) days, then Landlord shall promptly commence such repair work and diligently proceed to complete the same.

## 8. CONDEMNATION

- a. If during the Term, all or a part of the Leased Premises shall be taken by eminent domain, then at the option of Tenant or Landlord, this Lease shall terminate. Tenant shall have no right to participate in any award or damages for such taking (except as set forth in subparagraph C hereof) and hereby assigns all of its right, title and interest therein to Landlord.
- b. For the purpose of this Paragraph 8, "taken by eminent domain" or "taking under the power of eminent domain" shall include a negotiated sale or lease and transfer of possession to a condemning authority under bona fide threat of condemnation for public use, and Landlord alone shall have the right to negotiate with the condemning authority and conduct and settle all litigation connected with the condemnation. As herein above used, the words "award of

damage" shall, in the event of such sale or settlement, include the purchase or settlement price of any such negotiated transfer.

- c. Nothing herein shall be deemed to prevent Tenant from claiming, negotiating, and receiving from the condemning authority, if legally payable, compensation for damages for Tenant's loss of business, business interruption and/or removal and relocation, provided such compensation in no way reduces the amount of compensation payable to Landlord.
- 9. MAINTENANCE, REPAIRS AND UTILITIES. Landlord agrees to make all necessary repairs, replacements, or alterations to the interior of the Leased Premises and to the foundation, roof, exterior walls (excluding painting thereof), structural columns and structural beams of the Leased Premises, except if such repairs, replacements, or alternations are necessitated by the actions of Tenant or any of its employees or agents. Landlord shall provide water and electricity (the "Utilities") to the Leased Premises. Landlord shall have no liability to Tenant for any inadequacy, cessation, or interruption of any Utilities. Notwithstanding the foregoing, Tenant shall be responsible for general maintenance and cleaning of the Leased Premises as reasonably required by Landlord All costs to repair or restore damage caused to the Leased Premises by Tenant, or any of its employees or agents, shall be paid by Tenant. The Tenant's obligation under this paragraph shall survive the expiration or earlier termination of this Lease.
- 10. **INDEMNIFICATION.** Unless any of the same shall be caused solely by the negligence of Landlord, Landlord's members, managers, directors, officers, shareholders, agents, servants, and employees, Landlord and Landlord's agents, servants, employees, members, managers and officers shall not be liable for, and Tenant hereby agrees to indemnify and hold Landlord and Landlord's agents, servants, employees, members, managers and officers harmless from, all claims for damage to person or property (including loss or interruption of business) resulting from any fire, accident, or occurrence or condition in or upon the Leased Premises, sustained by any party arising from Tenant's occupation and use of the Leased Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any act or negligence of Tenant, its agents, servants, employees, students or invitees in or about the Leased Premises. In case of any action or proceeding brought against Landlord, or Landlord's agents, servants, employees, shareholders, directors, members, managers or officers, by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding at its own cost and expense by counsel of Landlord's own selection or counsel otherwise reasonably satisfactory to Landlord. This indemnification shall survive the expiration or earlier termination of this Lease.
- 11. **CONTINGENCIES**. This Agreement is contingent upon the Landlord, to the reasonable satisfaction of Tenant, converting the Guard Station and the Maintenance Room into office space for use by Tenant. In addition, prior to the Commencement Date, Tenant shall have unrestricted access to the Leased Premises.
- 12. PERSONAL VEHICLES. Officers of the Wilmington Police Department may use the Parking Spaces for their personal vehicles provided each officer executes an

indemnification and hold harmless agreement indemnifying the Landlord from liability in connection with such officer's use of the Parking Spaces and provided that the officers may only park their vehicles in those spots designated by Landlord for personal vehicles.

- 13. **SAFETY**. All guns, firearms, shotguns, weapons and/or any other incendiary device brought into the Lease Premises by the Tenant shall be stored in a properly secured ballistic locker and shall otherwise be handled, stored, and secured in accordance with all local, state or federal laws. Tenant shall act in a manner that will reasonably ensure the safety and security of the other Tenants in the Building, including without limitation the students, staff, parents and other visitors, and shall not otherwise interfere with the safe operation of the Building.
- 14. PARKING ADJACENT TO THE BUILDING. As consideration for this Agreement, Landlord will be permitted to use those parking spaces adjacent to the Building (the "Adjacent Parking Spaces"), as shown on the attached Exhibit "B" as areas for the loading and unloading of students at the beginning and end of school days, and as emergency lanes during the day. Landlord may use the Adjacent Parking Area, without interference from Tenant, in connection with its use of the Building.
- 15. **ABANDONMENT**. Tenant shall fully occupy the Leased Premises no later than thirty (30) days following the Commencement Date and shall otherwise fully occupy and have a continuing visible presence at the Leased Premises during the Term. If it is determined, in Landlord's reasonable judgment, that Tenant has not occupied the Leased Premises for a period of fifteen (15) consecutive days, Landlord may immediately terminate this Lease upon written notice to Tenant.
- DEFAULT. In the event of a default in or breach of this Agreement by Tenant, Tenant shall, upon written notice from Landlord, proceed immediately in good faith to cure or remedy such default or breach, and, in any event, within the time specified in this Agreement or if no time is specified within thirty (30) days after receipt of such notice. If such curative action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied in a timely manner, such default or breach shall constitute an "Event of Default". Thereafter, the Landlord may institute such proceedings or take such actions as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, terminating this Agreement. Notwithstanding the foregoing, if Tenant breaches, in the reasonable judgment of Landlord, Paragraph 13 of this Agreement regarding safety, Landlord may immediately terminate this Agreement without providing Tenant the notice and opportunity to cure set forth in this Paragraph.
- 17. **TERMINATION OPTION**. Notwithstanding anything contained in this Lease to the contrary, Landlord or Tenant may terminate this Lease for any reason or no reason at all with at least six (6) months prior written notice to the other. Such written notice shall set forth the date the Lease will be terminated (the "Termination Date"). Upon proper exercise of the termination option by either party, this Lease shall terminate and be of no further force or effect, except for those provision that otherwise survive expiration or termination of this Lease, on the Termination Date. Should termination occur, both parties agree to work together to ensure a smooth transition and maintain a positive relationship.

- 18. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or in any manner transfer, mortgage or encumber this Lease or any estate or interest therein, nor lease or sublet the Leased Premises or any part thereof or any right or privilege appurtenant thereto, nor allow anyone to conduct business at, upon or from the Leased Premises, except the City of Wilmington Police Department, without the written consent of the Landlord, such consent to be in sole and absolute discretion of Landlord.
- 19. SUBORDINATION. This Lease shall be subject and subordinate to the lien of any present or future mortgage or mortgages upon the Leased Premises or any property of which the Leased Premises are a part, which are placed thereon by Landlord or its successors or assigns, irrespective of the time of execution or the time of recording of any such mortgage or mortgages. Provided that if Tenant is requested to execute a subordination agreement Tenant may require that as a condition thereto that in the event of foreclosure or other action taken under any mortgage by the holders thereof, this Lease and the rights of Tenant hereunder shall not be disturbed but shall continue in full force and effect so long as Tenant shall not be in default hereunder. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, extensions, renewals and replacements thereof and any and all advances thereunder.
- 20. NON-DISTURBANCE. Landlord covenants and warrants to Tenant that Tenant on abiding by the terms and conditions of this Lease and performing its covenants herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises and all appurtenances thereon during the full Term of this Lease
- 21. **END OF TERM**. Upon the expiration or other termination of the Term, Tenant shall quit the Leased Premises and surrender same to Landlord, broom clean, in good order and condition, ordinary wear and tear excepted, and Tenant shall remove all of its personal property, including but not limited to equipment, supplies and furniture at such time.
- 22. LANDLORD-TENANT CODE. It is expressly understood and agreed that the Premises is a "commercial unit" as defined in 25 Del. C. § 6102 and that, pursuant to 25 Del. C. § 5101(b), this Lease shall not be governed by Delaware's Residential Landlord-Tenant Code, 25 Del. C. §§ 5101, et seq. Accordingly, this Lease shall be governed by general contract principles and the statutes relating to commercial leases that are identified in 25 Del. C. § 5101(b).
- 23. TENANT ESTOPPEL CERTIFICATES. Tenant shall within ten (10) days of written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing in such form as may reasonably be requested by a prospective purchaser of all or any portion of the Leased Premises or prospective lender as to which all or any portion of the Leased Premises or its leases may be assigned as security (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further reasonable information with respect to this Lease of the Leased Premises as may be requested thereon. Any such statement may be relied upon by

any prospective purchaser or encumbrance of all or any portion of the real property of which the Leased Premises are a part.

- 24. LANDLORD'S ACCESS TO LEASED PREMISES. Tenant covenants and agrees to permit Landlord, its, agents, contractors, and representatives, upon reasonable prior notice to inspect and examine the Leased Premises from time to time and at any time. Any such entry and inspection shall be conducted in such a manner so as to limit the disturbance of the carry-on by Tenant of the Permitted Use on the Leased Premises.
- 25. **NOTICE**. Any notices given or required to be given hereunder shall be by hand delivery, by overnight courier with receipt confirmation, or by registered or certified mail, return receipt requested. Notices shall be deemed given on the date sent for hand delivery and on the day after the date sent for overnight courier and registered or certified mail. All notices shall be sent to the following addresses, or such addresses as the party may direct by written notice:

If to Landlord:

PS#5, LLC

100 W. 10<sup>th</sup> Street

Wilmington, DE 19801 Attn.: Robert Boyd, COO

With copy to:

James D. Taylor Saul Ewing LLP

222 Delaware Avenue

P.O. Box 1266

Wilmington, DE 19899

If to Tenant:

With copy to:

- 26. ENTIRE AGREEMENT. This Agreement constitutes the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.
- 27. **SEVERABILITY**. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of such provision shall not be affected thereby.
- 28. WAIVER. Either party may waive any condition to its obligations under this Agreement and may waive any of its rights, powers and privileges under this Agreement. Failure of a party to contest or complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any

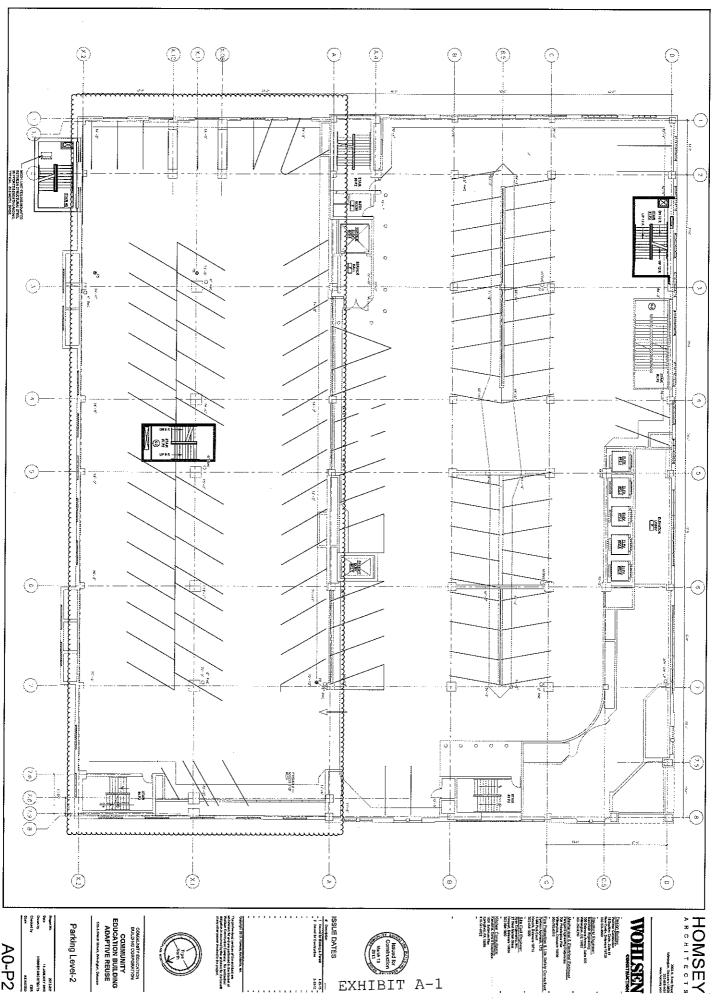
of its rights hereunder. No waiver by a party at any time, express or implied, shall be deemed a waiver of any other matter or a consent to any subsequent similar act or omission, breach of the same or any other provision. No acceptance by a party of any partial performance or payment shall constitute an accord or satisfaction but shall only be deemed a part performance or payment on account.

- 29. **COUNTERPARTS**. This Agreement may be executed in several counterparts, which when taken together shall be deemed to be an original. Each executed copy hereof shall be deemed an original.
- 30. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Any suits, claims and litigation arising under to pertaining to this Agreement shall be brought in a court of competent jurisdiction located in New Castle County, Delaware. Each of the parties to this Agreement hereby consent to the personal jurisdiction of any such court and hereby waive any right or privilege to contest the same. Each party hereby appoints the Secretary of State of the State of Delaware as its agent for the purpose of accepting service of process in connection with any such suit, claim or litigation. Each party hereby waives its right to trial by jury in any such suit, claim or litigation.
- 31. SUCCESSORS. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. No other person or entity will be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against the parties hereto or their respective heirs, personal representatives, successors and assigns.
- 32. **COMMUNITY PROGRAMS**. Tenant agrees the City of Wilmington Police Department (the "Department") shall make itself available to the school tenants in the building as part of the Department's community outreach with such programs, among others, as (i) K-9 demonstrations; (ii) crime prevention safety presentations; (iii) fingerprinting and identification cards; (iv) Police Athletic League activities; (v) traffic safety presentations; and (vi) police mentoring programs.
- 33. TRANSFER OF LANDLORD'S INTEREST. Landlord may assign or otherwise transfer its interest in the Leased Premises or the Building without the consent of the Tenant.

[SIGNATURE PAGE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed under seal as of the date below upon which Landlord has executed this Lease.

SEALED AND DELIVERED	
IN THE PRESENCE OF:	LANDLORD:
	PS#5, LLC
(SEAL)	Signature:
Witness/Attest	Print Name:
	Title:
	TENANT:
	CITY OF WILMINGTON
	Signature:
(SEAL)	
Witness/Attest	Print Name:
	Title:



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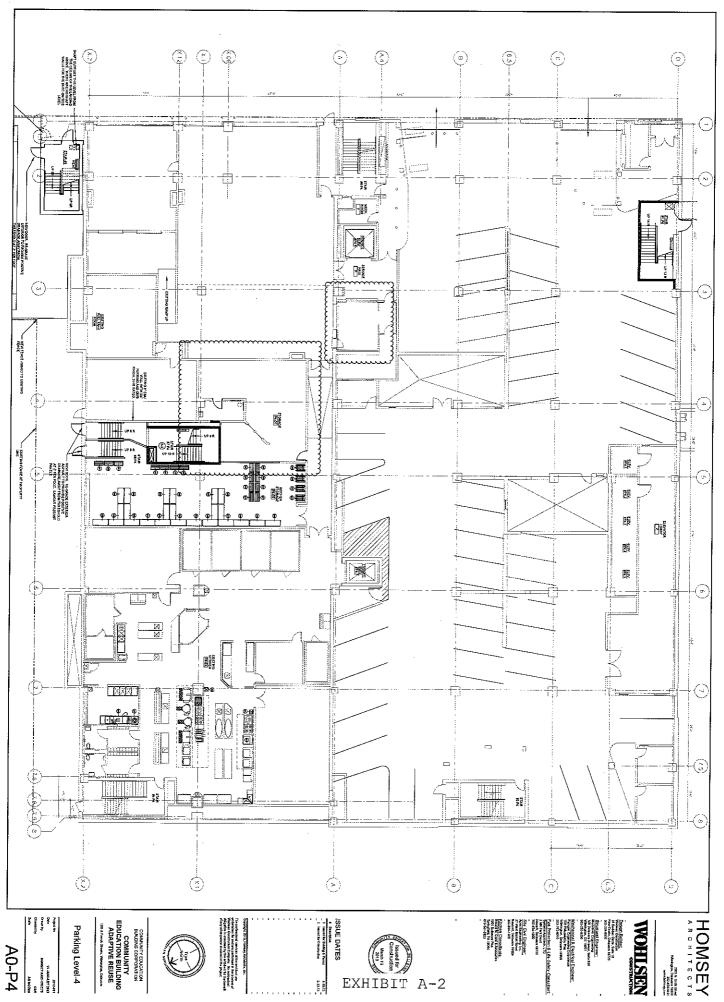
Parking Level-2







EXHIBIT A-1



A0-P4



EXHIBIT A-2

HOMSEY

